

# HOUSE BILL REPORT

## EHB 1568

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### As Passed Legislature

**Title:** An act relating to persons selling, soliciting, or negotiating insurance.

**Brief Description:** Regulating persons selling, soliciting, or negotiating insurance.

**Sponsors:** Representatives Bailey, Kirby, Rodne, Roach, Kelley and Simpson; by request of Insurance Commissioner.

#### **Brief History:**

##### **Committee Activity:**

Financial Institutions & Insurance: 1/29/09, 2/3/09 [DP].

##### **Floor Activity**

Passed House: 2/23/09, 96-0.

Passed Senate: 4/7/09, 47-0.

Passed Legislature.

#### **Brief Summary of Engrossed Bill**

- Prohibits certain practices for surplus line brokers.
- Applies a number of statutes to surplus line brokers.
- Makes a number of language and grammatical changes.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** Do pass. Signed by 9 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Roach and Simpson.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Santos.

**Staff:** Jon Hedegard (786-7127)

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Office of the Insurance Commissioner (OIC) licenses and regulates insurance agents, brokers, and solicitors. An insurance agent is appointed by an insurer to solicit applications for insurance on behalf of the insurer. If authorized to do so, an agent may enter into insurance contracts and collect premiums on insurance. An insurance broker is a person who, on behalf of an insured, for a fee, solicits, negotiates, or procures insurance for insureds. A solicitor is authorized by an agent or broker to solicit applications and collect premiums for an agent or broker.

In 2007 the Legislature passed Substitute Senate Bill 5715 and altered the regulatory framework for insurance agents and brokers. Substitute Senate Bill 5715 was based largely on the National Association of Insurance Commissioner's Producer Licensing Model Act. Among the modifications to the oversight of agents and brokers are changes to the categories of licenses, background checks, fees, and commissions. Another change was the replacement of the terms "agent," "broker," and "solicitor," with the term "insurance producer." "Title insurance agents" were not included in the scope of the term "producer." An insurance producer is a person required to be licensed under the laws of the state to sell, solicit, or negotiate insurance. A title insurance agent is a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

In 2008 the Legislature passed Engrossed Senate Bill 6591. Engrossed Senate Bill 6591 changed some words and phrases that became obsolete with the passage of Substitute Senate Bill 5715. Some additional terminology and grammatical changes were made. There were also some changes to allow for more ease of implementation regarding the use of the new terms on insurance policy forms.

Substitute Senate Bill 5715 and Engrossed Senate Bill 6591 both take effect on July 1, 2009.

#### Adjusters.

An adjuster is a person who, for compensation, investigates or reports to his principal relative to claims arising under insurance contracts on behalf solely of either the insurer or the insured. Insurers are licensed by the OIC. An "independent adjuster" is an adjuster representing the interests of the insurer. A "public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

#### Unauthorized Insurers and Surplus Line Brokers.

Under insurance statutes, if coverage cannot be purchased from an authorized insurer, the coverage may be purchased from an unauthorized insurer only if:

- the purchaser procures the insurance through a licensed surplus line broker;
- a diligent effort is made to find the coverage from authorized insurers; and
- the purpose for using an unauthorized insurer is something other than securing a lower premium rate than would be accepted by any authorized insurer.

Requirements regarding surplus line brokers include:

- licensure, including background checks;
- minimum bonding amounts of \$20,000 in the name of the state to ensure compliance with the law and pay taxes and \$100,000 in the name of the state or a named insured for liability;

- record-keeping; and
- reporting.

While some provisions regarding the regulation of surplus line brokers were changed in the 2007 and 2008 legislation, many other provisions were not altered.

### **Summary of Engrossed Bill:**

#### Producers.

Licensed surplus line brokers licensed are specifically excluded from the definition of "insurance broker."

The Insurance Commissioner (Commissioner) must adopt, by rule, minimum continuing education rules for producers.

Additional language and grammatical changes are made in the statutes that apply to producers.

#### Title Agents.

Non-resident business entities acting as title agents must be licensed as a title insurance agent. They must fill out an application, pay licensing fees, be appropriately incorporated in their home states, be appointed by an authorized title insurer, and comply with other specified laws.

#### Adjusters.

A person may not hold themselves out to be an adjuster unless licensed by the Commissioner or otherwise authorized under law to act as an adjuster. Adjusters have to undergo background checks in the licensing process. Non-resident adjusters who are licensed in another state may receive reciprocity in this state.

#### Surplus Line Brokers.

Minimum bonding amounts in the name of the state or a named insured for liability are modified. A surplus line broker must have bonds in the amount of \$2,500, or 5 percent of premiums in the previous year -- whichever is greater. This amount is capped at a maximum of \$100,000.

Additional methods to satisfy the bonding requirements are created.

Provisions regarding the renewal of a license and the impact of late renewal or of renewing a lapsed license are added.

A surplus line broker who receives any funds representing premiums or return premiums which belong to or should be paid to another person related to an insurance transaction is deemed to have received the funds in a fiduciary capacity and must:

- report the exact amount of consideration charged as premium to the insurer;
  - list the exact amount in the contract and in the records of the surplus line broker;
  - promptly account for and pay to the insured, insurer, or person entitled to the funds;
- and

- account for and maintain in a separate account from all other business and personal funds except for specified circumstances.

Each willful violation of the provisions regarding funds constitutes a misdemeanor. Any licensee who unlawfully diverts or appropriates funds received in a fiduciary capacity is guilty of theft.

The Commissioner may adopt rules to implement the provisions of the chapter that applies to surplus line brokers.

A number of sections that currently apply to producers are also specifically applied to surplus line brokers. This includes statutes that address:

- unfair claims and practices in insurance;
- certain prohibited acts in insurance;
- insurance mergers, rehabilitation, liquidation, supervision;
- local government insurance transactions;
- the Uniform Insurers Liquidation Act;
- the insurance fraud program;
- certain rights and immunities;
- employments and occupations covered by industrial insurance; and
- the business and occupation tax.

Additional language and grammatical changes are made.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2009.

**Staff Summary of Public Testimony:**

The overhaul of the regulation of producers has been an ongoing effort. The OIC has worked with all of the stakeholders to resolve all outstanding issues. We had some initial concerns. We have worked with the OIC to resolve those concerns and want to thank the OIC for their hard work. This bill was a collaborative effort. We are satisfied with the end result.

**Persons Testifying:** Drew Bortner, Office of the Insurance Commissioner; and Tom Parker and Robert Hope, Surplus Line Association of Washington.

**Persons Signed In To Testify But Not Testifying:** None.